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NO. 92-1678

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA, PETITIONER,

V.

TRACY MONIQUE CALDWELL, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITIONER'S REPLY TO THE OPPOSITION BRIEF OF RESPONDENT

OF

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SUMMARY OF THE REPLY ARGUMENT

1. From the first time the Respondent advanced the claim at issue here in the trial court, it was

presented as being under Miranda v. Arizona, (384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 [1966]), a case by this Honorable Court construing the United States Constitution. Miranda was cited and relied on by the state courts. The issue decided by the state courts and presented by the petition is an issue of U.S. Constitutional Law.

2. The finding of fact by the Trial Judge is incorporated into the questions presented by the petition. At issue in the instant case is the application of the law to such fact and that is an issue of law.

3. The language quoted by the Respondent from Arizona v. Fulminante, (499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 [1991]), relating to mental

coercion is irrelevant to this case, in which there has never been even a suggestion of police coercion of any sort.

4. The Respondent is correct in asserting that many lower courts assume the correctness of the notion adopted by the Alabama Courts in this case. Since this notion undermines the purposes of the Miranda rule, we are asking this Court to review it in this case.

REPLY ARGUMENT

I.

STATE LAW GROUNDS?

The issue in this case first arose in the Circuit Court of Tuscaloosa County, Alabama, as a result of a motion to suppress. See pages 6-7 of the petition. The key ground of that motion read:

> "...5. The Defendant, Tracy M. Caldwell did not understand or perceive her Miranda Rights as read to her by Tuscaloosa County Police Officers and therefore could not have given the statements knowingly and voluntarily ..." (R. pp. 83-84; petition page 7; emphasis supplied.)

Thus from the outset, the Respondent's claim was based squarely on this Honorable Court's opinion in Miranda v.

Arizona, (384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct.1602 [1966]).

From the beginning the issue was whether failure to understand a Miranda warning alone rendered a statement involuntary within the meaning of the United States Constitution. This was the issue developed by the evidence. The State proved that the Petitioner had been subjected to no police coercion and had been advised of her rights, had expressly acknowledged understanding them and had freely and expressly waived them, four times. The Defense took no issue with this evidence but sought to cancel it by proving that not withstanding her assertions to the police, Caldwell did

not understands the concepts of Miranda. Finding that Caldwell did not understand the concepts of Miranda and accepting the Defense theory equating not understanding Miranda concepts with involuntariness, the Trial Court suppressed the Respondent's statements. The Trial Court's three sentence order mentions Miranda twice. See Appendix A to the petition. The Court of Criminal Appeals of Alabama affirmed the Trial Court's understanding of Miranda v. Arizona and its opinion and order. The Court of Criminal Appeals' opinion mentions Miranda twenty-two times. State v. Caldwell, 611 So.2d 1149 (Ala.Cr.App, 1992); Appendix B to the petition. Obviously, this case was decided by the

state courts under Miranda v. Arizona, a decision of the Supreme Court of the United States construing the Constitution of the United States. Yet, the Respondent claims that this case was decided under Alabama law.

Of course, Miranda v. Arizona, along with the great body of U.S. Constitutional Law, is the law of Alabama. Article VI of the United States Constitution provides, in pertinent part:

> "...This Constitution and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

However, the question of the correctness of the interpretation and

application of the Constitution is not a state law question.

II.

THE ISSUES IN THIS CASE ARE OF LAW NOT FACT

Respondent Caldwell seems to argue that the voluntariness issue is purely one of fact and, therefore, since the Trial Judge found the Respondent's statements involuntary, that closes the matter. If such an argument had any validity Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), would never have reached this Court. The state trial court found as a fact that Connelly's statements were involuntary due solely to his mental condition. However, this Court ruled that a compulsion to confess which arises from a person's mental condition, which is not the result of

police action, does not produce a confession which is involuntary within the meaning of the Fifth Amendment. "...'[T]he ultimate issue of "voluntariness" is a legal question requiring federal determination'..." Arizona v. Fulminante, 499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 (1991)

In this case, the Trial Court found as a matter of fact that Respondent Caldwell could not understand the Miranda warnings she received due solely to her mental condition, her assertions to the police that she did understand not withstanding. This finding of fact is incorporated in the questions presented by the instant petition. See also note 5 at page 9 of the petition. The

issues presented by the petition relate, not to the facts found by the Trial Judge, but to the legal conclusion His Honor reached based on those findings. These issues are of law not fact.

III.

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

Quoting from Arizona v. Fulminante, (499 U.S.___, 113 L.Ed.2d 302, 316, 111 S.Ct. 1246 [1991]), the Respondent correctly points out that coercion can be mental, as well as physical. Therefore, concludes the Respondent, the decisions and opinions of the Alabama Courts in this case are consistent with this Court's rulings. However, in this case there has never been a claim or any evidence of any coercion, mental or physical. There is no basis for even a suggestion of any sort of coercion by the police in this case.

On the other hand, the Respondent makes no effort to reconcile the State

Courts' identifying a lack of understanding of a Miranda warning with involuntariness, with the many holdings of this Honorable Court finding voluntariness without Miranda compliance. See pages 23-25 of the petition.

IV.

LOWER COURT DECISIONS

The Respondent argues that the decisions of the State Courts in this case are consistent with certain lower court opinions.

It is, of course, true that just as many courts once assumed that compulsion to confess resulting from a mental defect was involuntariness for Fifth Amendment purposes, a notion rejected by this Court in Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), many courts assume that mental deficiency defeats Miranda compliance, notwithstanding police efforts. This latter notion completely undermines the "...concrete

constitutional guidelines for law enforcement...", (Miranda v. Arizona, 384 U.S. 436, 441-442, 16 L.Ed.2d 694, 705, 86 S.Ct. 1602 [1966]), which Miranda was intended to establish. It also defeats the clarity and specificity of the Miranda rule. See the language quoted from Berkemer v. McCarty, 468 U.S. 420, 430, 82 L.Ed.2d 317, 328, 104 S.Ct. 3138 (1984) and Fare v. Michael C., 442 U.S. 707, 718, 61 L.Ed.2d 197, 208, 99 S.Ct. 2560 (1979) at pages 28 and 29 of the petition. If this notion is valid, no matter how the police act toward an arrestee, no matter what warnings they give, no matter how often they repeat the warnings, no matter how many times the arrestee asserts understanding, and

no matter how many waivers are executed, a constitutional violation is still possible.

The purpose of the instant petition is to present this widely held notion for the review of this Honorable Court.

CONCLUSION

In conclusion your Petitioner, the State of Alabama, again respectfully submits that in this case the Court of Criminal Appeals and the Supreme Court of Alabama, ruled contrary to the decisions of this Honorable Court and erroneously resolved an important question not previously addressed by this Honorable Court.

Therefore, Your Petitioner again prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of and reverse the decisions of the said appellate courts of Alabama.

Respectfully submitted,

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